HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P.No. 305 of 2004 (S/S)

Mahendra

Vs.

P.O. Labour Court and another.

Approval for reporting.

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Not approved for reporting.

Date of decision 20.07.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 305 of 2004 (S/S)

Mahendra S/o Bhartu,
R/o Village Shantershah,
P.O. Daulatpur, District Haridwar. …….Petitioner

VS

Presiding Officer, Labour Court,
Dehradun & another. ……Respondents

Mr. Pankaj Miglani, Advocate for petitioner.
Learned Standing Counsel for the respondents.

Dated:- 20th July, 2004

Hon'ble Rajesh Tandon J.

By the present writ petition, the petitioner has prayed for the issueance of a writ, order or direction in the nature of certiorari quashing the award dated 23.12.1999 passed by respondent no. 1 i.e. the Presiding Officer, Labour Court, Dehradun.

FACTS:

Brief facts giving rise to the present writ petition according to the case of petitioner are that he worked with respondent no. 2 since 1.6.1980 till 4.6.1988. He worked as a muster roll employee "Baildar". He was not given any notice of termination of services prior to 5.6.1988, the day on which he was dispensed from his services and that he had completed 240 days of continuous service in 12 calendar months. On 5.6.1988 his service was illegally terminated without following the provisions contained under section 6-N of the Industrial Disputes Act.

The petitioner has raised the dispute and the State Government made a reference under Section 4-K of the U.P. Industrial disputes Act and referred the matter to Labour Court, Dehradun for its adjudication and the reference was as follows:-

"क्या सेवायोजकों द्वारा उनके कर्मचारी श्री महेन्द्र पुत्र श्री भरतू बेलदार को दिनांक 5.6.88 से कार्य पर न लिया जाना उचित एवं वैधानिक है।"

After hearing both the parties, following points arise for determination:

i. Whether the findings of the Labour Court with regard to the petitioner so far as 240 days are concerned is correct?

ii. The calculation of continuous service of 240 days should be in any 12 calendar months or in the immediately proceeding 12 calendar months.

Finding on point no. i:

The Counsel for the petitioner has stated that the Labour Court has not considered the calculations of 52 Sundays and 17 other paid holidays while calculating the continuous period of service of the petitioner workman. The relevant portion of the findings of the Labour Court with regard to the continuous period of service of the petitioner workman is quoted below:-

" सेवायोजक पक्ष द्वारा उठाई गई विधिक आपत्तियों में जाने की आवश्यकता नहीं है क्योंकि विवाद के निर्णय हेतु मुख्य प्रश्न यह है कि वादी श्रमिक ने संदर्भादेश में अंकित सेवा समाप्ति की तिथि 5.5.88 से पूर्व 12 कैलेण्डर माहों में 240 दिनों तक कार्य कर लिया था या नहीं ।। सेवायोजकों ने अपने लिखित कथन के प्रस्तर 1 में यह कहा है कि वादी को कार्य से नहीं हटाया गया था बल्कि वह स्वेच्छा से कार्य छोड़कर चला गया था और उसने कोई प्रार्थनापत्र नहीं दिया जबकि प्रस्तर 2 में यह कहा यह कहा यह स्पष्ट किया कि वादी श्रमिक ने 5 / 84 तक ही कार्य किया था। अपने प्रत्युत्तर में उन्होंने यह स्पष्ट किया कि वादी श्रमिक ने सेवायोजकों के नियंत्रण में चल रहे कार्यों पर 4 / 81 से 5 / 84 तक आकस्मिक प्रकृति के कार्यों पर श्रमिकों की आवश्यकता व उपलब्धता के अनुसार कार्य किया और 5 / 84 के बाद वह स्वयं कार्य पर नहीं आया और 5 / 84 से पूर्व के 12 कैलेण्डर महीनों में 203 दिन ही कार्य किया।''

So far as 52 Sundays and 17 other paid holidays are concerned, the apex court has observed that while taking into consideration 240 days worked by the employee concerned, Sundays and other paid holidays have to be taken into consideration.

In the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking of Corporation AIR 1986 SC 458. It has been held as under :-

> *"The principles of statutory construction are well settled. Words occurring in statues of liberal import such as social welfare legislation and human rights legislation are not to be put in Pricrustean beds or shrunk to Liliputions dimension. In constructing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to more concerned with the 'colour' the 'content' and the 'context' of such statues (we have borrowed the words from Lord Wilberforce's opinion in Prenn. Vs. Simmonds {(1971) 3ALLER)}. In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, insolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguists considerations. In one of the cases cited before us, that is, Surendra Kumar Verma Vs. Central government Industrial Tribunal cum-LabourCourt (1981) ISCR 798; (1981) 4SCC 443; 1981 SCC(L&S) 16, we had occasion to say,*
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> ***"Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions."***

"Section 25-F of the Industrial Disputes Act is plainly intended to give relief of retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance in Section 25-B (2)(a)(ii) which to the extent that it converts us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expressions which were required to construe is "actually worked under the employer". This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or per, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. the learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-(B)(2) should be taken into account of the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer". The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression "actually worked under the employer" is capable of comprehending the days during which the workman was in employment and was paid wages-

and we see no impediment to so construe the expression. To give it any other meaning than what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated.

In H.D.Singh Vs. Reserve Bank of India and thers AIR 1986 SC 132 the following observations is as under:-

"That takes us to the question the appellant had qualified himself to sustain his claim to the benefits of Section 25-F. The appellant, as we will presently see, has given the number of days on which he worked, in his claim statement. The first respondent bank arranged posting Tikka Mazdoors, like the appellant, in such manner that they were denied the benefits of the Industrial Disputes Act. Since the first respondent bank disputed the fact that the appellant had worked the sufficient number of days to entitle him to claim remedies under the Act, we think it necessary to refer to the facts as disclosed in the records. The advocate who appeared for the appellant before the Tribunal, Shri R.N. Srivastava, has filed an affidavit in this Court stating that he had filed written argument before the Tribunal explaining the mistake committed by the bank in the computation made by it of the numbers of working days of the appellant. From this affidavit, it is seen that the first respondent-bank put forward a case that the attendance register for the month of July 1976 had been destroyed and that Sundays and others holidays were not taken into account in computing the number of days that the appellant worked. We have also a supplementary affidavit filed by the appellant himself which throws further light about the number of days. In this affidavit, it is seen that he worked for 4 days in 1974, 154 days from January 1975 to December 1975 and 105 days from January 1976 to July 1976. The Appellant was denied work from July 1976. His affidavit shows that he

had worked for 202 days from July 1975 to July 1976. According to him if we add 52 Sundays and 17 holidays, the total number of days on which he worked comes to 271 days. The appellant charged the bank with having tampered with the records. To contradict the appellants case, the first respondent bank did not produced its record. The appellant wanted the relevant records to be filed by they were not produced. Grounds 18 to 20 of the special leave petition make mention of this plea of appellant. These grounds are met by the first respondent bank in their counter affidavit filed in this court by stating that " when the matter was before the Industrial Tribunal the registers in question were filed in another case before the Industrial Tribunal – cum Labour Court and produced in that court. However, I submit but the payment register are available with the respondent bank as proof of the number of days in which the appellant worked." In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked forever that 240 days from July 1975 to July 1976 is true."

From the above findings it is clear that the Labour Court has specifically recorded the findings that the petitioner has worked for 203 days in twelve preceding months from the date of his termination but it has erred in not calculating 52 Sundays and 17 other holidays while calculating the total number of days of his continuous service and had it been so the number of days of continuous service of the petitioner workman would have definitely been more than 240 days.

Finding on point no. ii:

Learned Counsel for the petitioner has also submitted that Labour Court has also erred in giving its finding that the workman has not worked for more than 240 days in 12 calendar months. The findings of Labour Court are as follows:-

"वादी श्रमिक यह सिद्ध करने में असफल रहा है कि उसने सेवा समाप्ति से पूर्व 12 कैलेण्डर महीनों में 240 दिन तक कार्य कर लिया था। माननीय उच्च न्यायालय बम्बई ने प्राव प्लास्ट प्रा0लि0 बनाम के0ए0 चौधरी में दि0 25.10.99 के निर्णय में इस बात पर जोर दिया है कि चूंकि धारा 26– एफर्ि6–एनक्र का पालन न करने से सेवायोजकों पर बहुत प्रतिकूल प्रभाव पड़ता है अतः लिखित कथनों / प्रत्युत्तरों व साक्ष्य का भलीभांति परीक्षण किया जाना आवश्यक है और केवल यह कहना पर्याप्त नहीं है कि श्रमिक ने 240 दिन तक काम कर लिया था जब तक actual computation of computation service on recorded न हो very heavy burden is placed on the workman to prove to the hilt the failure of the employer to comply with sec 25F. और कार्य दिवसों की संख्या के बारे में crucial and material evidence के अभाव में यह नहीं कहा जा सकता कि श्रमिक ने 240 दिनों तक लगातार काम कर लिया था एफ एल आर जनवरी 2000 वाल्यूम –84 पृष्ठ 122 मेरे समक्ष विचाराधीन इस विवाद में जो साक्ष्य प्रस्तुत किया गया उससे वादी श्रमिक का 12 कैलेण्डर माहों में 240 दिनों तक काम करना सिद्ध नहीं होता है।"

Hon'ble Apex Court, in the case of M/S U.P. Drugs and Pharmaceuticals Company Limited Vs. Ramanuj Yadav and Others reported in JT 2003 (Suppl. 1) SC 383, has held as under:-

"Under the aforesaid legislative background, the question involved is required to be considered. Section 2(g) of the UP Act does not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during 'preceding' period of 12 calendar months. The word 'preceding' has been used in Section 25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the work 'preceding'. The concept of 'preceding' was introduced in the ID Act so as to give complete and meaningful benefit of welfare legislation to the working class. The approach to be borne in mind while interpreting the welfare legislation is

illustrated in Surendra Kumar Verma etc. Vs. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Anr. [(1981) 1 SCR 789] where this Court has observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Thus I am of the view that in view of the aforesaid Judgment of Hon'ble Apex Court, the findings of Labour Court that the workman has not completed 240 days in 12 calendar months is totally illegal.

Conclusions:

The workman was working as a baildar with respondent no. 2 since 1.6.1980 till 4.6.1988. He has completed 240 days of the working in 12 months and the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 have not been complied with by the employer, therefore, retrenchment of the petitioner was wholly illegal.

In view of the findings recorded above, the writ petition is allowed. The impugned award dated 23.12.1999 is quashed and the respondent no. 2 is directed to reinstate3 the petitioner and to pay him full wages from the date of this order. No order as to costs.

(Rajesh Tandon, J.)

Dt. 20.07.2004
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